## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

WAYNE JONES,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 4:11CV1459 JCH
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

## MEMORANDUM AND ORDER

This matter is before the Court on petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because "it plainly appears from the petition . . . that the petitioner is not entitled to relief," the Court will dismiss the petition. Rule 4 of the Rules Governing § 2254 Cases.

Petitioner was sentenced to ten years' imprisonment on August 12, 2011. <u>State v. Jones</u>, 1022-CR3741-01 (22nd Judicial Circuit, City of St. Louis). Petitioner filed a notice of appeal on August 19, 2011. <u>Jones v. State</u>, ED97195 (Mo. Ct. App.). The appeal is still pending. Petitioner then filed a Rule 29.15 motion on September 26, 2011. <u>Jones v. State</u>, 1122-CC10574 (22nd Judicial Circuit, City of St. Louis). The postconviction relief motion has been stayed pending the outcome of the appeal.

Before federal habeas relief can be granted, a person in state custody is required to exhaust available state remedies. 28 U.S.C. § 2254(b)(1). In this case, petitioner

is currently pursuing state remedies in the state courts. As a result, the Court will

dismiss this action without prejudice for failure to exhaust state remedies.

Furthermore, petitioner has failed to make a substantial showing of the denial of

a constitutional right in relation to his failure to exhaust, which requires a demonstration

"that jurists of reason would find it debatable whether the petition states a valid claim

of the denial of a constitutional right." Khaimov v. Crist, 297 F.3d 783, 785 (8th Cir.

2002) (quotation omitted). Thus, the Court will not issue a certificate of appealability.

28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that petitioner's petition for writ of habeas corpus

pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that the Court will not issue a certificate of

appealability.

Dated this 19th day of February, 2012.

/s/Jean C. Hamilton

JEAN C. HAMILTON

UNITED STATES DISTRICT JUDGE

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